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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/427,260	10/25/1999	FARHAD KHOSRAVI	239/227	2937

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ORRICK, HERRINGTON & SUTCLIFFE, LLP  
IP PROSECUTION DEPARTMENT  
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IRVINE, CA 92614-2558

EXAMINER
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PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 09/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/427,260

Applicant(s)

KHOSRAVI ET AL.

Examiner

Brian E Pellegrino

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☐ This action is **FINAL**.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29,30,55-57 and 59-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29,30,55-57 and 59-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/01/05 has been entered.

### ***Response to Amendment***

The declaration under 37 CFR 1.132 filed 7/1/05 is insufficient to overcome the rejection of claims 29,30 based upon Fogarty et al. '520 in view of Khosravi et al. (5441515) as set forth in the last Office action because: the Khosravi patent does not teach away from the disclosure of Fogarty since both patents discuss a stent of a coiled up sheet having overlapping inner and outer longitudinal sections. Mr. Leopold also points out that the Fogarty stent is formed with oblique ends. It is noted that Khosravi also illustrates that stents can be formed with oblique ends, see Fig. 14. Thus, these two patents are capable of being considered to combine any teaching because of their similar structural features.

### ***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 55,57,59,61,62 are rejected under 35 U.S.C. 102(e) as being anticipated by Fogarty et al. (5800520). Fig. 9A shows a stent with a plurality of stretchable elements biased to expand from a contracted condition or are in an unstretched condition. Fig. 9B illustrates the stretchable elements in the stretched condition. Fogarty et al. disclose the stent is formed from a coiled-up sheet having overlapping inner and outer longitudinal sections, that is unrollable to an enlarged condition, col. 5, lines 4-11. Fogarty also discloses the sheet is made of a shape memory material, i.e. Nitinol, col. 6, lines 17-21. The sheet should be cooled at about 25 °C for martensitic transformation and heated to about body temperature for austenitic transformation, col. 6, lines 23-29. It is noted that Fogarty discloses that flexible or expandable elements can be formed with a serpentine pattern, which inherently forms wing-like elements with undulations, col. 4, lines 65-67.

Claims 29,30,55-57,59-62 are rejected under 35 U.S.C. 102(e) as being anticipated by Khosravi et al. (5824054). Fig. 6 shows a stent sheet of stretchable elements (col. 4, line 62) with a plurality of locking elements **51** extending from the inner longitudinal section for engaging openings in the outer longitudinal section. It can also be seen there are a plurality of wing-like elements **52**, which are sinusoidal or undulate (col. 9, lines 29,30) with first and second members that extend generally parallel to the longitudinal axis. It can also be seen the wing-like elements are connected at a point intermediate a pair of elements. Khosravi et al. disclose the stent is formed of shape memory material, col. 5, lines 55-67.

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The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 29,30,56,60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fogarty et al. '520 in view of Khosravi et al. (5441515). Fogarty is explained supra. However, Fogarty does not disclose a plurality of locking elements extending from the inner section to the outer to secure the stent in the enlarged condition. Khosravi et al. teach (Figs. 4,5) a coiled sheet stent with a plurality of locking elements **25** that extend from the inner section to the outer section and secure the stent in an expanded condition. Khosravi teaches that locking elements are used on coiled sheet stents to prevent failure of the device, such that it maintains patency, col. 1, lines 49-51. It would have been obvious to one of ordinary skill in the art to incorporate a plurality of locking elements in the coil sheet stent as taught by Khosravi et al. in the stent of Fogarty such that it remains in the enlarged condition and does not collapse in the patient.

***Response to Arguments***

Applicant's arguments filed 7/1/05 have been fully considered but they are not persuasive. Fogarty is combinable with Khosravi for the reasons set forth above. Applicant's arguments with respect to claims 55-57, 59-62 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on Monday-Thursday from 7am to 4:30pm. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TC 3700, AU 3738

**BRIAN E. PELLEGRINO**  
**PRIMARY EXAMINER**

*Brian E. Pellegrino*